

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

CITIZENS UTILITY BOARD,

Complaint requesting the ICC)
to order Nicor Solutions to) No. 04-0034
cease and desist misleading)
marketing of gas offering.)

Chicago, Illinois
January 25, 2005

Met, pursuant to notice, at 10:00 a.m.

BEFORE :

MR. GLENNON DOLAN, Administrative Law Judge

APPEARANCES :

SONNENSCHNEIN, NATH & ROSENTHAL, by
MR. MICHAEL GUERRA and MS. SARAH NAUMER
8000 Sears Tower
Chicago, Illinois 60606
for Nicor Gas/Nicor Solutions;

MR. STEVEN WU
208 South LaSalle Street
Suite 1760
Chicago, Illinois 60604
for CUB;

1 MR. JOHN REICHART and MR. VLADAN MILOSEVIC
2 160 North LaSalle Street
3 Suite C-800
4 Chicago, Illinois 60601
5 for ICC staff.
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20 SULLIVAN REPORTING COMPANY, by
21 Jennifer L. Velasco, CSR
22 License No. 084-004030

1	<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>					
2		Re-	Re-	By		
3	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>Examiner</u>
4	NONE					
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7	<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>					
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9	<u>Number</u>	<u>For Identification</u>			<u>In Evidence</u>	
10	NONE					
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1 JUDGE DOLAN: By the power and authority of the
2 Illinois Commerce Commission, I call Case
3 No. 04-0034; Citizens Utility Board versus Nicor
4 Solutions, LLC, and Northern Illinois Gas Company
5 doing business as Nicor Gas Company, a complaint
6 requesting the ICC to order Nicor Solutions to
7 cease and desist misleading marketing of gas
8 offerings to order.

9 Would the parties please identify
10 themselves for the record.

11 MR. MILOSEVIC: On behalf staff of the Illinois
12 Commerce Commission, Vladan Milosevic and John
13 Reichart, 160 North LaSalle, Suite 800, Chicago,
14 Illinois 60601. Our phone number is
15 (312) 793-2877.

16 MR. WU: Appearing on behalf of the Citizens
17 Utility Board, Steven Wu, 208 South LaSalle Street,
18 Suite 1760, Chicago, Illinois 60604.

19 MR. GUERRA: Appearing on behalf of Nicor
20 Solutions, LLC, and Nicor Gas Company, Michael
21 Guerra and Sarah Naumer of the law firm
22 Sonnenschein, Nath, and Rosenthal, 8000 Sears

1 Tower, Chicago, Illinois 60606.

2 JUDGE DOLAN: Let the record reflect there are
3 no other appearances.

4 We have before us a motion to dismiss
5 the complaint filed by the Citizens Utility Board.

6 After reviewing all of the counts, I
7 think that the only count that the Commission could
8 really proceed on would be the Section 7-101, which
9 is where, you know, the Commission has the
10 authority to investigate plans with the affiliates.

11 Specifically, you know, I went through
12 each section of the complaint, and Section 8-501 is
13 specifically addressed to a public utility. Again,
14 Section 9-250 is also addressed to a public
15 utility. And in Section 19, which is the
16 Alternative Gas Suppliers Act, specifically Section
17 5/19-110, says that an alternative gas supplier has
18 to be certified by this Commission.

19 Now, the real problem is that if Nicor
20 Solutions went out of business today, you know, gas
21 would continue to flow for all the customers. I
22 can't see a situation where, one, the Alternative

1 Gas Supplier Act is such a new act that I don't
2 think there's really any case law giving us any
3 discretion to label someone as a alternative gas
4 supplier without the certification.

5 And, secondly, you know, I just -- I
6 don't see that they truly are in the market of
7 distributing the gas. I mean, I think they're more
8 of a billing company which has these alternative
9 plans which, you know, is the basis of your
10 complaint.

11 I do feel, you know, there are some
12 questions about the program, and I think it is
13 something that the Commission should maybe take a
14 look at. But under the circumstances, the only
15 order that I can see coming out of this docket is a
16 cease and desist order. I mean, we don't have any
17 ability to enter any of the sanctions that Citizens
18 Utility Board is asking for.

19 And, you know, obviously there are some
20 questions. I think as it is pointed out in either
21 Nicor's or Nicor Solutions, there are other forums
22 to investigate this matter.

1 But for the type of relief that you're
2 seeking, I just don't really see that we can -- you
3 know, besides issuing a cease and desist and doing
4 all the verbal -- but I don't see any sanctioning
5 power that we have under this act. I mean, it's
6 different than telecom because telecom has the
7 specific provisions in there that gives us the
8 ability to sanction the utilities. The Alternative
9 Gas Supplier Act also gives us the ability to
10 sanction the utilities, but I find nothing in the
11 act that gives us that ability.

12 Obviously for the purposes of, you know,
13 the parties, I'll put something in writing so if
14 you want to proceed to the next level and file an
15 appeal with the Commission or even make it a
16 final -- an appeal board, I'll try to draw
17 something up there, you know, that gives everybody
18 that ability to pursue it.

19 Where do you want to go from there?

20 MR. WU: I have two questions, your Honor.

21 First of all, when do you anticipate
22 having such a written order?

1 JUDGE DOLAN: I'm going to try and get it done
2 hopefully in the next couple of weeks. I know, you
3 know, my time got really pressed with that
4 arbitration, but it's completely done now. And I
5 have a couple other side matters but I should be
6 able to get it done relatively soon.

7 MR. WU: And the second question I have was
8 given your current thinking on where you're at,
9 would it be possible to begin talking about a
10 schedule with regard to at least proceeding on the
11 potential violations you do see. It doesn't have
12 to be done today. Perhaps a week or so we can have
13 another status hearing.

14 MR. GUERRA: If I could, what I recommend is
15 that we set a status, you know, according to, you
16 know, when you expect to have a ruling, set a
17 status quickly thereafter and talk about the case
18 at that point. I think that would make sense.

19 MR. WU: That's fine.

20 JUDGE DOLAN: Is that acceptable?

21 MR. REICHART: Sure. Do you want to include in
22 your decision a status date or something setting a

1 status in your written decision?

2 JUDGE DOLAN: Yeah, if you want to do that, I
3 could do something to that effect.

4 MR. GUERRA: That would make sense, if there was
5 a conflict or something.

6 JUDGE DOLAN: I'll try to -- like I said, I'll
7 try to knock it out in the next two weeks now that
8 I know -- I'm sure we can find something probably
9 towards the middle or end of February and get
10 another status going and see where we're going to
11 go from there.

12 As far as setting a schedule, I'm
13 just -- you know, I figure if someone files an
14 appeal then, you know, we're going to have to see
15 where the Commission goes with everything anyway.
16 At this point I think we'll -- how about if I just
17 do that. I'll issue something in writing. I'll
18 set it, you know, give you a status date to see
19 where we're going to be with it, and then we can
20 proceed from there.

21 Is that acceptable to all the parties?

22 MR. WU: That is. I would just note I have a

1 deadline of February 18th in another matter filing
2 testimony, so that...

3 JUDGE DOLAN: I'll probably look at the next
4 week anyway, you know, the week of -- we're off the
5 21st -- the week of the 22nd maybe or somewhere in
6 that range.

7 How does that sound? Okay. And with
8 that, I guess we'll just be entered and continued
9 generally.

10 (Whereupon, the above matter
11 was continued generally.)

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